IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10671 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TALED GROUP VIVIDH KARYAKARI SEVA SAHAKARI MANDLI LTD.

Versus

SANAJI RANAJI BAROT

Appearance:

1. Special Civil Application No. 10671 of 1994

MS YOGINI PARIKH for MR KM PATEL for Petitioner No. 1

MR MK PATEL for MR KS ACHARYA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 25/08/2004

ORAL JUDGEMENT

#. Heard Ms.Yogini Parikh, learned counsel appearing for the petitioner and Mr.M.K.Patel, learned counsel

appearing for the respondent.

#. In the present petition, the petitioner has challenged the order passed by the Labour Court, Ahmedabad, in Recovery Application No.3944 of 1988 dated 7.3.1994. Vide impugned order, the Labour Court has granted the amount of bonus for the year 1987-88 being Rs.1076=60, plus the amount of Rs.5780=00 also being the amount of bonus, totalling Rs.7486=60 in favour of respondent. The Labour Court has further directed the petitioner to pay the amount of salary at the rate of Rs.876=50 per month from 8.7.88 till the date of award, after deducting the amount of subsistence allowance paid to the respondent.

#. The facts of the case are that the respondent-workman was working for more than 14 years with the petitioner-Talod Group Vividh Karyakari Seva Sahakari Mandali Limited and his salary was Rs.857/= per month. The respondent-workman committed misconduct relating to misappropriation and therefore was suspended on 7.7.88. During suspension period 75% of wages have been paid as subsistence allowance to the respondent-workman. The petitioner also paid due amount of salary being Rs.197=90 for the period 1.7.88 to 7.7.88 on 25.2.91. Thereafter, amount of subsistence allowance was also paid during the period of suspension. The subsistence allowance was fixed at Rs.657=30 and the same was paid during the entire suspension period. The workman concerned ultimately was dismissed from service in pursuance to the suspension order which was passed by petitioner. That dismissal order was challenged by respondent-workman before the Labour Court, Himmatnagar, in Reference No.540 of 1996. The Labour Court, Himmatnagar, has rejected the reference filed by the workmen by award dated 20.7.1999. Therefore, dismissal order has been confirmed by the Labour Court. The Labour Court in the impugned order has come to conclusion that the fact whether the Employment Standing Orders Act, 1946, is applicable to the Mandali or not is not proved by petitioner. Relying upon the decision of the apex court in Hotel Imperial case, the Labour Court has granted full wages for suspension period. This order has been passed by the Labour Court prior to the award passed by the Labour Court, Himmatnagar, whereby the removal of the respondent has been upheld. Therefore, considering the fact that suspension order has merged with the dismissal order and if ultimately the workman succeeds in setting aside the award in question, then he will get the benefits of full wages of suspension period. The respondent was dismissed from service on 14.2.1994, as stated by Mr.Patel, learned

counsel for the respondent. In view of these facts, the order passed by the Labour Court in Recovery Application No.3944 of 1988dated 7.3.94 insofar it relates to grant of full wages during suspension period with effect from 8.7.88 till the date of order, i.e. 7.3.94, is required to be quashed and set aside. In respect to bonus claim of the workman for the year 1987-88, and progressive bonus, it depends upon the rules of the petitioner-Mandali. Such bonus are based on service conditions of the employee concerned. When there is serious misconduct alleged against the workman and if the workman claims bonus for the that period, during pendency of inquiry, then it depends upon the service conditions and outcome of the inquiry and therefore, according to my opinion, the workman is not entitled for the amount of bonus as granted by the Labour Court because ultimately it depends upon the result of inquiry. Dismissal has been confirmed by the Labour Court and therefore, considering this fact, the award passed by the Labour Court in Recovery Application NO.3944 of 1988 dated 7.3.94 is quashed and set aside. It will be open for the workman to challenge the award passed by the Labour Court, Himmatnagar, whereby his dismissal from service has been upheld, before appropriate forum. However, it is made clear that the observations made by this court at this stage in this order will not come in the way when said award is challenged by the workman in higher forum.

#. In the result, the petition is allowed. The order dated 7.3.94 passed by the Labour Court, Ahmedabad, in Recovery Application No.3944 of 1988, is hereby quashed and set aside. Rule is made absolute. No order as to costs.

(H.K.RATHOD, J.)

(sunil)